IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P.No. 14181 of 2004
Date of decision: November 2,2006

M/s Stella Industries (P) Ltd. **...** Petitioner
Through
Mr. Mohan Jain, Advocate.

v.

The State of Haryana and others
.. Respondents
Through
Ms.Ritu Bahri, Deputy Advocate General, Haryana

CORAM:

Hon'ble Mr.Justice Adarsh Kumar Goel
Hon'ble Mr. Justice Rajesh Bindal

1. Whether Reporters of local papers maybe allowed to see the judgment ?

2. To be referred to the Reporters or not ?

3. Whether the judgment should be reported in the Digest?

JUDGMENT:

The petitioner has approached this Court seeking quashing of order dated 8.10.2001 (Annexure P.1), raising a demand of Rs. 1,01,81,630/- on account of excise duty for the period from 1.4.2001 to 30.9.2001; order dated 14.5.2002 (Annexure P.2) raising a demand of Rs. 2,19,13,064/- for the period from 1.4.2000 to 31.3.2001 and further orders 6.4.2004 and 18.8.2004 (Annexures P.3 and P.4), passed by Excise Commissioner, Haryana and Financial Commissioner, Haryana respectively dismissing the appeals against orders at Annexures P.1 and P.2 being barred by limitation.

Case of the petitioner is that it is a private limited company, engaged in the manufacture of body spray using "denatured spirit" under licence issued by the Excise and Taxation Officer, Gurgaon under the provisions of the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (for short, `the Act'). Under the said Act, duty is leviable on items mentioned in the Schedule. Entry 4 is "Toilet

Preparation containing alcohol or narcotic drug narcotic."

The plea on merits, raised by the petitioner, has been controverted by the State. In addition to this, learned State counsel submitted that the petitioner does not have a locus to make submissions on the merits of the controversy, as the appeals against orders at Annexures P.1 and P.2 have been dismissed by the appellate authorities, being time-barred, as the petitioner had failed to plead and satisfy the authorities below about the sufficient reasons for seeking condonation of delay in filing the appeals.

After hearing learned counsel for the parties, we are of the view that following two questions arise for determination by this Court:

(i) Whether orders at Annexures P.3 and P.4, passed by the Excise Commissioner and Financial Commissioner, Haryana respectively dismissing the appeals against orders at Annexures P.1 and P.2 as barred by time are in conformity with law ?

(ii) Whether excise duty is leviable on the petitioner on the manufacture of body spray using "denatured spirit" in terms of the provisions of the Act ?

Question No. (i)

As far as question No. (i) is concerned, from the pleadings of the parties, it reveals that a demand of Rs. 1,01,81,630/- and Rs. 2,19,13,064/- was raised against the petitioner on account of excise duty under the Act. As is found to be noticed in the paragraph 4 of his order dated 6.4.2004, passed by the Excise Commissioner, Haryana, that appeals against both the orders at Annexures P.1 and P.2 were filed by counsel for the petitioner on 23.12.2002 before the appellate authorities. It is also borne out from the record that though an application for condonation of delay in filing the appeal against order at Annexure P.1 was filed, but no application for condonation of delay in filing the appeal against order at Annexure P.2 was filed. The appeals in terms of Rule 127 of the Medicinal and Toilet Preparations (Excise Duties) Rules, 1956 could be filed within 3 months

from the date of decision or order appealed against. Appeal against order dated 8.10.2001 was belated by 11 months and 14 days, whereas there was a delay of 5 months in filing of appeal against order dated 14.5.2002. It is further evident from the order passed by the Excise Commissioner that the counsel, who had filed the appeals before the Excise Commissioner, filed C.W.P. No.20067 of 2002 before this Court challenging orders at Annexures P.1 and P.2 without disclosing the fact that the petitioner had already filed appeals against these orders before the appellate authorities. The writ petition was dismissed by this Court vide order dated 27.5.2003 by passing the following order:

> "In this petition, the petitioner has prayed for quashing orders Annexures P.25 dated 8.10.2001 and P.26 dated 14.5.2002 passed by Excise and Taxation Officer-cum-Excise Officer, Gurgaon (West) in the matter of payment of excise duty under Medicinal and Toilet Preparations (Excise Duties) Act, 1955.
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> We have heard Shri Devi Dayal Verma, learned counsel for the petitioner and perused the record.
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> In our opinion, the writ petition is liable to be dismissed because the petitioner has failed to avail the alternative remedy of appeal available to it. Confronted with this position, the learned counsel for the petitioner prayed that his client may be allowed to withdraw the writ petition with liberty to avail the remedy of appeal. At the same time, he submitted that the petitioner may be given liberty to file application for condonation of delay. The request of the learned counsel is accepted and the writ petition is dismissed as withdrawn with liberty to the petitioner to avail the remedy of appeal. In case the petitioner files an application within 15 days along with an application for condonation of delay, the same shall be disposed of in accordance with law by sympathetically considering the prayer of the applicant for condonation of delay.
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> Copy of the order be given Dasti on payment of fee prescribed for urgent applications."

It is evident from the order that even at the time of arguments also, counsel for the petitioner did not disclose before this Court that appeals, in fact, had already been filed . Rather, liberty of this Court to withdraw the writ petition

for availing remedy of appeal was prayed for. On his request, even liberty was granted to move an application for condonation of delay in filing the appeals. On these submissions, this Court granted liberty to the petitioner to file appeal within 15 days along with an application for condonation of delay and observed that the same shall be disposed of in accordance with law by sympathetically considering the prayer for condonation of delay.

It is not disputed that after the dismissal of the writ petition by this Court on 27.5.2003, the petitioner did not file any appeal or application for condonation of delay within the period permitted by this Court. All what was done by the petitioner was that he moved an application dated 27.8.2003 for condonation of delay, i.e., three months after the passing of order dated 27.5.2003 by this Court. Excise Commissioner, Haryana, while considering the application of the petitioner for condonation of delay, noticed all the facts and finding that there is no justification for condonation of delay in filing the appeal against order at Annexure P.1, dismissed the application for condonation of delay and further there being no application for condonation of delay in filing appeal against order at Annexure P.2, the same was also dismissed as time-barred. Aggrieved against the order passed by the Excise Commissioner, the petitioner preferred further appeal before the Financial Commissioner, who also found the conduct of the petitioner to be mala fide and dismissed the appeal.

At the time of arguments, counsel for the petitioner submitted that the appeals filed by the petitioner, even before passing of order dated 27.5.2003 by this Court when the petitioner was granted liberty to withdraw the writ petition and file appeal within 15 days thereof, should have been considered by the authorities on merits by condoning the delay, as this Court had directed the appellate authority to sympathetically consider the prayer of the petitioner for condonation of delay. On the other hand, learned State counsel vehemently objected to this argument and submitted that the petitioner did not approach this Court, while filing C.W.P. No.

20067 of 2002, with clean hands and it did not disclose complete facts. Rather, the factum of appeals having already been filed against orders at Annexures P.1 and P.2 was concealed from this Court. Even as per the liberty granted by this Court vide order dated 27.5.2003, the petitioner did not file any application before the appellate authority and the application was made after three months of the order, i.e., on 27.8.2003. It was further argued that even the reasons mentioned in the application for condonation of delay in filing the appeal against order dated 8.10.2001 were not found to be bonafide by the authorities below and there being no application for condonation of delay against order dated 14.5.2002 (Annexure P.2), there is no valid reason for setting aside orders at Annexures P.3 and P.4 dismissing the appeals of the petitioner on account of delay.

We find substance in the contention raised by the learned counsel for the State. The petitioner neither in the petition nor in his oral submission tried to assail orders at Annexures P.3 and P.4 passed by the appellate authorities on the ground on which the petitioner's request for condonation of delay was declined. The finding of the authorities holding that filing of delayed appeals was not bonafide was not controverted. Rather, the main thrust of the petitioner was to assail the orders on merits, which both the authorities below have not gone into, as the appeals were not entertained after condoning the delay. This being the position, we concur with the findings recorded by the authorities below while passing orders at Annexures P.3 and P.4 and answer the question against the petitioner and in favour of the respondents.

Question No. (ii)

Case of the petitioner is that its preparation does not contain alcohol but denatured spirit, which is defined in Section 2(vi) of the Act as under:

> “2(vi). `denatured spirit' or `denatured alcohol' means alcohol of any strength which has been rendered unfit for human consumption by the addition of substances approved by the Central Government or by the State Government with the approval of the Central Government.”

Even though we do not find any merit in the contention raised, in view of decision of Question No. (i), we need not express any final view on this question.

In view of the above, the writ petition is dismissed.

A copy of this order be placed on the file of C.W.P. No.15115 of 2001, which is said to be pending on this issue.

(Rajesh Bindal)
Judge

(Adarsh Kumar Goel)
Judge

November 2, 2006
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